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Nos. 20, 162

In the Supreme Court of the United States

OCTOBER TERM, 1951

UNITED STATES OF AMERICA, APPELLANT

v.

LOUISE VIRGINIA SMITH

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA, APPELLANT

v.

ARNOLD L. DAILEY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The orders of the District Court in No. 20 dismissing the indictment (R. 4-5) and denying the Government's petition for rehearing (R. 12-13)

are not reported. The memorandum opinion of the District Court in No. 162 (R. 2-3) is not reported.

JURISDICTION

In No. 20 the order of the District Court, as amended, dismissing the indictment, was entered on October 16, 1950 (R. 4-5), and the order denying the Government's petition for rehearing was entered on January 3, 1951 (R. 12-13). The United States filed its notice of appeal to this Court on February 1, 1951 (R. 13), and this Court noted probable jurisdiction on April 16, 1951 (R. 16).

In No. 162 the order of the District Court dismissing the indictment was entered on April 24, 1951 (R. 3-4). The United States filed its notice of appeal to this Court on May 24, 1951 (R. 4), and this Court noted probable jurisdiction on October 8, 1951 (R. 6).

The jurisdiction of this Court to review on direct appeals the decisions of the District Courts sustaining, prior to the attachment of jeopardy, the appellees' pleas in bar to the indictments is conferred by 18 U.S.C. 3731. See also Rules 37(a)(2) and 45 (a), F. R. Crim. P.

QUESTION PRESENTED

Whether the Wartime Suspension of Limitations Act, which suspended the "running" of any statute of limitations applicable to offenses involving fraud against the United States "until three years after the termination of hostilities"

as proclaimed by the President, is applicable to offenses of the type defined which were committed after the date of the proclamation of termination of hostilities, but within the three-year period following that date.

STATUTES AND PROCLAMATION INVOLVED

The pertinent parts of the statutes involved and Presidential Proclamation No. 2714 are set forth in the Appendix, *infra*, pp. 38-48.

STATEMENT

No. 20. On October 2, 1950, an indictment in two counts was filed in the District Court for the Western District of Texas charging the appellee Smith with having, on or about July 1, 1947, violated Section 29 of the Criminal Code (18 U.S.C. (1946 ed.) 73, now 18 U.S.C. 495, *infra*, p. 38). Count 1 charged that she falsely made and forged the name of the payee upon the back of a check drawn on the Treasurer of the United States for the purpose of obtaining the amount of the check from the Government. Count 2 charged that she uttered the check as true, knowing the indorsement to be forged, with intent to defraud the United States. (R. 2.)

The appellee moved to dismiss the indictment on the grounds that since it showed on its face that the offenses charged had been committed more than three years prior to the return of the indictment it was barred by limitations, and that

these offenses did not come within the provisions of 18 U.S.C. 3287,[1] which provides for the suspension of limitations in certain classes of cases while the United States is at war (R. 3). On October 16, 1950, the District Court granted the motion to dismiss, the order (R. 4) stating simply that the dismissal was "on the ground that more than three years has elapsed from the time of the commission of the offense as alleged in the indictment and the return of the indictment."

On November 9, 1950, the Government filed a petition for rehearing (R. 6-7), pointing out that the offenses charged in the indictment involved defrauding the United States; that under the Wartime Suspension of Limitations Act of 1942, as amended (18 U.S.C. (1946 ed.) 590a, *infra*, pp. 41-42), the running of the statute of limitations applicable to such offenses was suspended "until three years after the termination of hostilities in World War II"; that hostilities in World War II were declared terminated as of December 31, 1946, by Presidential Proclamation 2714 of that date (see *infra*, pp. 43-44); that, accordingly, the three-year statute of limitations applicable to the offenses charged did not commence to run until three years after December 31, 1946, i.e., until December 31, 1949; and that, consequently, the in-

[1] 18 U.S.C. 3287 (appearing in Supplement IV, United States Code, 1946 ed.) is, with a slight change in phraseology, the 1948 revision of the Wartime Suspension of Limitations Act of 1942, 56 Stat. 747, as amended in 1944, 58 Stat. 648, 667; *id.* 765, 781; 18 U.S.C. (1946 ed.) 590a. See, *infra*, pp. 19-21, 42-43.

dictment, which was returned on October 2, 1950, was not barred by the statute of limitations.[2] In her reply to the petition for rehearing (R. 8-10), the appellee relied on two contentions: (1) that the phrase, "When the United States is at war," in 18 U.S.C. 3287 (*infra*, p. 42, see footnote 1, *supra*, p. 4), delimits the operation of the Suspension Act to those offenses specified in that Act which were committed before the cessation of hostilities and (2) that the case of *United States* v. *Gottfried*, 165 F. 2d 360 (C.A. 2),[3] supports such construction. The Government filed a brief in answer to the appellee's reply (R. 10-11) pointing out that the Government mainly relied on the literal terms of the Suspension Act (18 U.S.C. 590a, *infra*, pp. 41-42) before the addition of the phrase, "When the United States is at war," in the 1948 revision of the Criminal Code.

The District Court denied the petition for rehearing (R. 12-13), holding that the indictment had been properly dismissed on the ground that it had been filed too late, *i.e.*, more than three years after the date of the commission of the alleged offenses. In so holding, the District Court stated (R. 16):

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[2] The petition for rehearing also pointed out that the 1942 Suspension Act was repealed by Section 21 of the Act of June 25, 1948 (the Act revising Title 18 of the United States Code; see, *infra*, p. 43), but that same Section 21 contains a saving clause with respect to "any rights or liabilities now existing under" any of the repealed laws.

[3] This case was miscited as *United States* v. *Gottlieb* by both appellee (R. 8-9) and the court below (R. 13).

> The Court is of the opinion that the Suspension Act, 18 U.S.C. 590(a), being the Act of August 24, 1942, as amended in 1944, applies only to offenses committed during the time prior to the termination of hostilities. Hostilities were proclaimed terminated as of December 31, 1946. The alleged offense is charged to have occurred July 1, 1947, and the three-year statute of limitations barred prosecution of this offense three years thereafter. " * * * The purpose of the amendment (18 U.S.C. 590(a)) was not to let crimes pass unpunished which had been committed in the hurly burly of war * * * " *United States* v. *Gottlieb*, 165 F. 2d 360, page 368.

No. 162. On September 29, 1950, an indictment (R. 1) was filed in the District Court for Colorado charging that on or about March 14, 1947, the appellee Dailey knowingly and willfully made a false and fraudulent statement in a matter within the jurisdiction of the United States Department of Agriculture in connection with his application for Farmers Home Administration services, in violation of Section 35(A) of the Criminal Code, 18 U.S.C. (1946 ed.) 80; reenacted as 18 U.S.C. (1948 rev.) 1001; *infra*, p. 39.

The appellee moved to dismiss on the ground that it appeared from the face of the indictment that the offense had been committed more than three years before the indictment was returned (R. 2). The United States opposed the motion, contending that under the Wartime Suspension

of Limitations Act the period of limitations did not commence to run until three years after the termination of hostilities as proclaimed by the President (see R. 2-3).

In granting the motion to dismiss the indictment, the District Court held that "The purpose of the Suspension Statute [18 U.S.C. (1948) 3287] was not to let crimes pass unpunished which had been committed 'when the United States is at war' ", citing *United States* v. *Gottfried*, 165 F. 2d 360 (C.A. 2); that the Suspension Act applies only to offenses committed when the United States is "at war"; and that in view of Presidential Proclamation 2714 declaring the termination of hostilities as of December 31, 1946, "the United States was *not* at war" (italics in original) in March 1947, the date of the offense alleged in the indictment, and the Suspension Act is therefore inapplicable (R. 3).

SPECIFICATION OF ERRORS RELIED UPON

In each case the District Court erred:

1. In holding that the Wartime Suspension of Limitations Act applies only to offenses committed prior to the declaration of termination of hostilities on December 31, 1946.

2. In granting the motion to dismiss the indictment.

SUMMARY OF ARGUMENT

The offenses here involved are of the type defined in the Wartime Suspension of Limitations

Act, and the sole issue for adjudication, therefore, is whether that act, which suspends the running of applicable statutes of limitations "until three years after the termination of hostilities," was operative as to offenses committed during the three-year period following the close of hostilities.

I

I. At the time of the commission of the offenses charged in the indictments (July 1 and March 14, 1947, respectively), the Suspension Act of August 24, 1942, as amended in 1944, was in effect. That act in plain and unambiguous language provided that the "running" of applicable statutes of limitations in cases of the type here involved "shall be suspended until three years after the termination of hostilities in the present war." This language makes no distinction between offenses committed before, and offenses committed after, the termination of hostilities, and no such distinction can be found therein by implication. The Suspension Act was enacted with congressional recognition that frauds against the Government would flourish during the post-hostility period when the economy of the nation would be reconverted from a war to a peace basis. Comparable legislation enacted after the close of hostilities in World War I was a precedent for the World War II suspension legislation.

In the Contract Settlement Act of 1944 Congress amended the original 1942 Suspension Act by substituting "until three years after the termination of hostilities in the present war" for "until June 30, 1945." At the same time the Suspension Act was made applicable to the offenses proscribed by the Contract Settlement Act. Since the offenses defined by the latter act were of a type likely to be committed, for the most part, during the post-hostilities period, it is not conceivable that Congress would have made the Suspension Act applicable to such offenses had it intended that act to be operative only during the period of hostilities. The same is true of the Surplus Property Act of 1944, which was enacted a few months after the Contract Settlement Act and which further amended the Suspension Act to include offenses under the Surplus Property Act.

2. The reliance by the appellee in No. 20 and by the District Court in No. 162 upon the language, "When the United States is at war," which was added to the revised version of the Suspension Act in the 1948 revision of the Criminal Code (18 U.S.C. 3287), is misplaced. The 1948 Act repealed the existing Suspension Act, but Section 21 of the 1947 act saved "rights or liabilities now existing." Since the offenses here were committed prior to the effective date of the 1948 act, the repealed Suspension Act is still controlling in these cases.

In any event, it is immaterial which of the two enactments is applicable. If the phrase, "When

the United States is at war," was added to restrict the suspension provision to offenses committed during a state of war, the result is the same, unless the phrase is interpreted as meaning a period co-extensive with the period of actual hostilities. Such an interpretation, however, would be inconsonant with the history of the suspension statute, and would be at variance with the decisions of this Court holding that a statute which terminates at the end of "war" will, in the absence of express Congressional direction to the contrary, be held to extend to the ratification of the treaty or proclamation of peace and will not be held to terminate at the close of hostilities. Here, there is no such congressional direction.

3. The holdings of the District Courts that the Suspension Act applies only to offenses committed during the period of hostilities renders the Act entirely inapplicable to a period in respect of which the accomplishment of its purpose requires that it be given effect. One of the prime purposes of the Act was to insure the punishment of frauds perpetrated against the United States during the turbulent period following the close of hostilities, when the nation would be faced with an enormous reconversion task and when its manpower would be in a state of flux; a period that would see the final settlement of most war contracts and the disposal of the great bulk of surplus war materiel. The decisions of the District Courts limiting the operation of the statute to offenses committed during hostilities de-

stroy its vitality for carrying out this prime purpose. The statute is clear, and the need for punishing frauds against the United States is an uncompromising one. The statute should therefore be given the construction called for by its plain language and purpose.

II

The history of the Suspension Act shows that it was intended to apply to offenses committed after the close of hostilities. The framers of the original act expressly stated that it was needed so that frauds might be discovered and punished after the end of hostilities, and the act was considered and enacted wth congressional awareness that comparable legislation had been enacted to cover the post-hostility period of World War I. Also, the language, "shall be suspended until three years after the termination of hostilities in the present war," which was placed in the statute by amendment in 1944, was placed there in circumstances which plainly indicate that Congress intended the statute to be applicable during the reconversion period. Moreover, the act, as amended, was made applicable to new classes of offenses involving war contract settlements and the disposal of surplus property, matters which Congress recognized would for the most part arise after the cessation of hostilities.

ARGUMENT

The sole issue presented in these appeals is whether the Wartime Suspension of Limitations

Act operated to suspend the normal three-year statute of limitations with respect to offenses committed during the three-year period following the cessation of hostilities proclaimed by the President on December 31, 1946, i.e., the three-year period between December 31, 1946, and December 31, 1949. In the cases at bar the offenses charged in the indictments were alleged to have been committed in March 1947 (No. 162) and July 1947 (No. 20), after the termination of hostilities and within that three-year period. If the Suspension Act applies to those offenses, the normal three-year statute of limitations (R.S. 1044; now 18 U.S.C. 3282, *infra*, pp. 39-40) did not begin to run until December 31, 1949, and prosecution in September 1950 (No. 162, R. 1) and October 1950 (No. 20, R. 2) was not barred, since the three-year period would not expire until December 31, 1952. On the other hand, if the Suspension Act is not applicable to offenses committed after the cessation of hostilities, the three-year statute of limitations began to run when the alleged offenses were committed and would, of course, have barred prosecution in September and October 1950, respectively, when the indictments were returned.

It is the Government's contention that the Suspension Act suspended the running of the normal three-year statute of limitations until the expiration of three years after the cessation of hostilities, or until December 31, 1949; that the

plain and unambiguous language of the Suspension Act permits of no other reasonable construction of its terms; that such construction finds support in the legislative history of the Act; and that the decisions of the District Courts below, holding that the Act applies only to offenses committed prior to the cessation of hostilities, disregard the direct mandate of the statute and in large part defeat its purpose.[4]

I

The Suspension Statute By Its Express Terms, As to the Offenses Defined Therein, Suspended the Running of the Applicable Statutes of Limitations Until Three Years After the Cessation of Hostilities

1. *The Suspension Act prior to the 1948 revision.*—In March and July, 1947, when the offenses involved in these cases were alleged to have been committed, the Wartime Suspension of Limitations Act, as amended (56 Stat. 747; 58 Stat. 649, 667; *id.* 765, 781; 18 U.S.C. (1946 ed.) 590a, *infra*, pp. 41-42), provided in pertinent part that—

> The running of any existing statute of limitations applicable to any offense against the laws of the United States (1) involving defrauding or attempts to defraud the United

[4] Two other District Courts, in cases involving the question whether fraud was an ingredient of the offenses charged, assumed, although the point in issue here was not raised, that the Suspension Act applies to offenses committed during the three-year period following the termination of hostilities on December 31, 1946. *United States* v. *Choy Kum*, 91 F. Supp. 769, 770 (N.D. Cal.); *United States* v. *Shoso Nii*, 96 F. Supp. 971, 972 (D. Hawaii), now pending on direct appeal, No. 469, this Term.

> States or any agency thereof whether by conspiracy or not, and in any manner * * * shall be suspended until three years after the termination of hostilities in the present war as proclaimed by the President or by a concurrent resolution of the two Houses of Congress. * * *

This language makes no express distinction between offenses committed before, and offenses committed after, the proclamation of the termination of hostilities, and no such distinction can, with reason, be found therein by implication. The language is entirely devoid of any words of limitation confining its operation to offenses committed before the cessation of hostilities. On the contrary, in plain and unambiguous language its mandate is that the "running" of the applicable statute of limitations "shall be suspended until three years after the termination of hostilities in the present war."

In holding that the Suspension Act applies only to offenses committed prior to the termination of hostilities, i.e., prior to December 31, 1946, both District Courts below relied upon a dictum in *United States* v. *Gottfried*, 165 F. 2d 360, 368 (C.A. 2), that the purpose of the Act "was not to let crimes pass unpunished which had been committed in the hurly-burly of war" (No. 20, R. 13; No. 162, R. 3).[5] That statement, however, was addressed

[5] In No. 162, the District Court also relied upon the introductory phrase, "When the United States is at war," which was

solely to the wholly different problem whether fraud was an ingredient of the offenses involved in that case. Moreover, the "hurly-burly of war" may be said to be present during the post-hostility period when the nation is faced with pressing demobilization and reconversion problems which may hinder the Government in discovering and punishing frauds perpetrated during that period as much as during actual hostilities. The cessation of the so-called "shooting war" does not abate this type of fraud, for it flourishes on the turbulence incident to a rapid reconversion from war back to peace, when war contracts are finally adjusted and when huge quantities of surplus property must be equitably disposed of by the Government in a manner that will not disrupt the economy of the nation. Congressional recognition of this fact is found in comparable legislation enacted in 1921, several years after the cessation of hostilities in World War I. The Act of November 17, 1921, c. 124, 42 Stat. 220, enlarged to six years the three-year period of limitation provided in R.S. 1044 with respect to offenses involving the defrauding of the United States, and that Act, passed more than three years after the Armistice, was obviously operative only as to offenses committed after the cessation of hostilities. (See pp. 27-30, *infra*.)

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added to the Suspension Act when it was revised and enacted as permanent legislation as part of the 1948 revision of the Criminal Code. We show below (pp. 19-25) that the addition of this clause in the revision did not remove post-hostility offenses from the Suspension Act.

The language, "until three years after the termination of hostilities in the present war," first appeared in the Suspension Act of 1942 by way of an amendment to that Act contained in the Contract Settlement Act of July 1, 1944, 58 Stat. 649; 41 U.S.C. 101, *et seq.* Section 19(b) of the Contract Settlement Act amended the Suspension Act of 1942 by inserting therein the above-quoted language in lieu of the words, "until June 30, 1945,"[6] and by adding a clause (2) in the Suspension Act, which made it applicable to offenses committed in connection with the negotiation, termination, settlement, etc., of war contracts: See, *infra,* pp. 40-41. The Contract Settlement Act, which provided punishment for violations of its provisions, was plainly designed to cope with reconversion and other post-hostility problems and to enhance a return to normal business operations by the host of contractors who, during the war, had converted their establishments for the purpose of performing services in connection with the war effort. Indeed, Section 1 of that Act (58 Stat. 649) stated that two of its primary objectives were "(a) * * * to expedite reconversion from war production to civilian production as war condi-

[6] As originally enacted, the Suspension Act of August 24, 1942, *infra,* p. 40, suspended the running of applicable statutes of limitation with respect to offenses involving the defrauding of the United States "until June 30, 1945, or until such earlier time as the Congress by concurrent resolution, or the President, may designate." See, *infra,* pp. 27-37, where the history of the Suspension Act and its amendment by the Contract Settlement Act is more fully developed.

tions permit," and "(f) * * * to detect and prosecute fraud."[7] Thus, at the same time Congress passed the Contract Settlement Act with the avowed purpose that it would be effective in large measure during the reconversion period following the end of hostilities, it amended the Suspension Act not only specifically to include within the period of the suspension of the running of statutes of limitations the three-year period following the termination of hostilities, but also to make it applicable to offenses which the declared objectives of the Contract Settlement Act clearly contemplated would be highly inimical to the welfare of the nation and difficult of discovery when committed during that period.

Further evidence of the recognition by Congress that frauds against the United States, conceived and brought to fruition in the post-hostility period, would require enlarged time for discovery and punishment, is found in the Surplus Property Act of October 3, 1944, 58 Stat. 765, 781. This Act further amended the Suspension Act to make it applicable to a third group of offenses "committed in connection with the care and handling and disposal of property under the Surplus Property Act of 1944." See pp. 41-42, *infra*. It is clear that the

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[7] Section 19(a), 58 Stat. 667, 41 U.S.C. 119, making it unlawful to secrete, mutilate, obliterate or destroy certain records of war contractors within, *inter alia*, "five years after the termination of hostilities in the present war," is further evidence that Congress was concerned with frauds in the period of settlement following the end of the fighting.

Surplus Property Act was designed to reach its maximum degree of operation and effectiveness during the period following the cessation of hostilities, since there would be little likelihood that disposals of surplus property on any large scale would take place during actual hostilities.

It would have been strange for Congress, in the latter half of 1944 when the end of the fighting was in sight, to include in the Suspension Act the language, "shall be suspended until three years after the termination of hostilities in the present war," unless it intended the Act to apply to offenses committed after the close of hostilities. In the first place, the Suspension Act of 1942 had already suspended the running of the applicable statutes of limitations until June 30, 1945, so that there was little apparent need for amendment if only offenses committed during hostilities were intended to be included within the suspension. Secondly, at that late period of the war, Congress made the amendatory language applicable to offenses in connection with the administration of the Contract Settlement and Surplus Property Acts, and both of those Acts, as we have pointed out, were obviously designed to operate principally in the post-hostility period. In the circumstances, it is scarcely plausible that Congress contemplated that offenses in connection with those Acts in the period of reconversion following the close of hostilities would be of any lesser national concern than similar offenses committed before the anticipated end of the fight-

ing. Since it is clear that Congress intended the Suspension Act to apply to the newly established offenses when committed after the fighting had ended, it necessarily follows that Congress also intended it to apply to the cognate offenses involving fraud on the United States described in the original Suspension Act—offenses of the type involved here—when committed in the same period. We submit that the plain language of the Suspension Act of 1942, as amended, permits of no other reasonable construction.

2. *The Suspension Act after the 1948 revision.*—The Act of June 25, 1948, 62 Stat. 683, 862, 868, which revised the Criminal Code, repealed the Suspension Act, as amended, and, with slight changes in phraseology, reenacted its provisions into permanent law as 18 U.S.C. 3287. This section reads in pertinent part as follows:

> When the United States is at war the running of any statute of limitations applicable to any offense (1) involving fraud or attempted fraud against the United States or any agency thereof in any manner, whether by conspiracy or not, * * * shall be suspended until three years after the termination of hostilities as proclaimed by the President or by a concurrent resolution of Congress. * * *

However, Section 21 of the Act of June 25, 1948, *infra*, p. 43, provided that rights or liabilities then existing under all of the repealed laws should not be affected by the repeal.

The appellee in No. 20 and the District Court in No. 162 relied on the new introductory phrase, "When the United States is at war," in the 1948 revised version as delimiting the application of the suspension statute to those offenses which had been committed prior to twelve o'clock noon, December 31, 1946, the date upon which the President proclaimed the termination of hostilities in World War II (No. 20, R. 8-10; No. 162, R. 3). The District Court in No. 20, however, limited its consideration to the Suspension Act as it read prior to the 1948 revision. If the 1948 revision embodied a substantive change, it would seem that the policy of the prior law with respect to offenses committed before the change became effective was preserved by the saving provision in Section 21 of the 1948 Act revising the Criminal Code. Cf. *Hoiness* v. *United States*, 335 U.S. 297, fn. 6, pages 300-301.

It is the Government's position, however, that it is immaterial whether the preexisting statute or the 1948 revision is the applicable law. In the former, as we have shown, there are no words to restrict the applicability of the law to offenses committed before the termination of hostilities, and the context and scope of the 1944 amendments prove that no such limitation was intended. In the latter, the only words of limitation are those appearing in the introductory phrase, "When the United States is at war." This phrase, however, carries no implication that Congress intended any change in the operative period of the statute. On

the contrary, it indicates only that the purpose was to make definite and certain the circumstances under which the statute would begin to operate, not when it would cease to be operative. The clause, "shall be suspended until three years after the termination of hostilities," was not changed and is a plain command as to when the statute shall cease to operate. Thus, the language, "When the United States is at war," implies no intention on the part of Congress to limit the application of the suspension provision to offenses committed during hostilities.

The reviser's note [8] to §3287 of the 1948 revision explains that—

> The phrase "When the United States is at war" was inserted at the beginning of this section to make it permanent instead of temporary legislation, and to obviate the necessity of reenacting such legislation in the future. This permitted the elimination of references to dates and to the provision limiting the application of the section to transactions not fully barred. When the provisions of the War Contract Settlements Act of 1944, upon which this section is based, are considered in connection with said section 590a which it amends, it is obvious that no purpose can be served now by the provisions omitted. * * *
>
> The revised section is written in general terms as permanent legislation applicable whenever the United States is at war. * * *

[8] See note following 18 U.S.C. (1946 ed.), Supp. IV, 3287.

It is thus clear that no substantive change in the operation of the legislation was intended, except that the Act was to be permanent law to become operative in time of war.

Assuming, however, that the phrase, "When the United States is at war," was added to restrict the applicability of the suspension provision to offenses committed during the existence of a state of war, there is no difference in result, unless it is also assumed that that phrase describes a period of time co-extensive with the period of actual "hostilities." Such an interpretation would be manifestly unsound, since it would be inconsonant not only with the historical background of the suspension statute, but also with decisions of this Court holding that a state of war may continue to exist after hostilities have ended.

Hostilities in World War II were declared terminated by Presidential Proclamation 2714 of December 31, 1946, *infra*, pp. 43-44, which provides, *inter alia*:

> Although a state of war still exists, it is possible to declare * * * that hostilities have terminated.

In order to establish that Congress intended the period of "war" to be coextensive with the period of "hostilities" also mentioned in the revised provision, it is necessary to assume that Congress was not cognizant of the essential distinction between the two terms. This Court has held that in constru-

ing a statute which terminates at the "conclusion of the war," the period of war will, in the absence of specific provisions to the contrary, be held to extend to the ratification of the treaty of peace or the proclamation of peace and will not be held to end at the cessation of hostilities. *Hamilton* v. *Kentucky Distilleries Co.*, 251 U.S. 146, 164-168; *Hijo* v. *United States*, 194 U.S. 315, 323. See also, *In re Yamashita*, 327 U.S. 1, 11-12; *Kahn* v. *Anderson*, 255 U.S. 1, 9; *McElrath* v. *United States*, 102 U.S. 426, 438; *The Protector*, 12 Wall 700; *United States* v. *Anderson*, 9 Wall. 56.

This principle has been applied in recent cases rejecting claims that war powers delegated by Congress came to an end with the cessation of hostilities in World War II. Under the First War Powers Act of 1941, 55 Stat. 838, certain authority was given to the President to be exercised "only in matters relating to the conduct of the present war" and to expire six months after "the termination of the war." This Court held that under that statute a state of war still existed in 1947, and that such statutory language conferred not only the power to deal with problems of law enforcement which arose during the period of actual hostilities but also those that arose during the continuing emergency following the cessation of hostilities. *Fleming* v. *Mohawk Co.*, 331 U.S. 111, 116. In the more recent case of *Ludecke* v. *Watkins*, 335 U.S. 160, which arose under the Alien Enemy Act of 1798 (later R.S. 4067, as amended, 40 Stat. 531) granting the

President power to remove alien enemies from the United States whenever there should be a "declared war," this Court said (pp. 166-167):

> And so we reach the claim that while the President had summary power under the Act, it did not survive cessation of actual hostilities. This claim in effect nullifies the power to deport alien enemies, for such deportations are hardly practicable during the pendency of what is colloquially known as a shooting war. Nor does law lag behind common sense. War does not cease with a cease-fire order, and power to be exercised by the President such as that conferred by the Act of 1798 is a process which begins when war is declared but is not exhausted when the shooting stops.

At the time of the commission of the offenses charged in the cases at bar (March and July 1947), it is clear that the United States was still at "war" within the well established meaning of that word as used in §3287 of the 1948 revision. *Knauff* v. *Shaughnessy*, 338 U.S. 537, 546;[9] *Ludecke* v. *Watkins*, *supra*; *Woods* v. *Miller Co.*, 333 U.S. 138, 147 (opinion of Mr. Justice Jackson); *Bejeuhr* v. *Shaughnessy*, 177 F. 2d 436 (C.A. 2), certiorari denied, 338 U.S. 948. This construction would seem

[9] In the *Knauff* case, the Court was concerned with special restrictions on the entry of aliens promulgated under the Act of May 22, 1918, as amended, 40 Stat. 559, 55 Stat. 252, 22 U.S.C. 223, the introductory phrase of which is identical with the language of § 3287, *i.e.*, "When the United States is at war * * * ." See also, *Sichofsky* v. *United States*, 277 Fed. 762, 763-764 (C.A. 9).

to be particularly apposite here where there is no language in either the prior law or the revised law to show that Congress contemplated that the period of World War II would end, or had ended, with the cessation of hostilities. And in view of the fact that prior to the time Congress inserted the phrase, "When the United States is at war," in the revised law, the President had proclaimed that a state of war still existed, although hostilities had terminated, is is scarcely likely that Congress would have remained silent had it intended otherwise.

3. *The decisions below destroy a large part the vitality of the statute.*—The holdings below that the suspension statute applies only to offenses committed prior to the cessation of hostilities renders the statute entirely inoperative in a period as to which the accomplishment of its purpose requires that it be effective. The period following the end of hostilities is the period during which the nation is faced with a huge and pressing reconversion task; this period embodies the interval when the nation's manpower is in a state of flux. It is during this period that the major part of the thousands of Government wartime contractual engagements are finally adjusted and settled and enormous quantities of surplus war materiel must be disposed of. As we have shown, Congress had that period in mind when, in 1944, it enlarged the period of suspension of the running of limitations from June 30, 1945, as originally enacted in 1942, to "three years after the termination of hostilities," and at the

same time extended the suspension statute to include crimes committed in connection with the Contract Settlement and Surplus Property Acts of 1944; for it was plainly contemplated that transactions under those acts, and therefore crimes connected with such transactions, would reach their peak after the cessation of hostilities. It is difficult to conceive that Congress, while using words which plainly state the contrary, intended to limit the effective life of the Suspension Act to the period of hostilities when there would in all likelihood be few final contract settlements and when there would be little or no surplus property on hand.

Finally, the adoption of the District Courts' interpretation of the Act as applying only to offenses committed before the termination of hostilities (December 31, 1946) would result in an anomaly. Under such construction, the prosecution of an offense committed on December 31, 1946, may be instituted as late as December 31, 1952, but prosecution for one committed on the following day, January 1, 1947, must have been instituted by January 1, 1950, or is now barred. The Government's construction avoids such a result. Under it, December 31, 1952, is the deadline for instituting prosecutions for all offenses (of the types defined in the suspension statute) committed at any time between the effective date of the original statute (August 24, 1942) and December 31, 1949 (three years after the proclaimed cessation of hostilities).

We submit that the need for punishing frauds against the United States is an uncompromising one, and that since the language and objectives of the Suspension Act are so plain, they are not to be thwarted by an artificial conception that war ends with the cessation of hostilities. Cf. *United States* v. *California*, 297 U.S. 175, 186; *United States* v. *Rice*, 327 U.S. 742, 752-753.

II

The History of the Suspension Statute Shows That Congress Intended It To Apply To Offenses Committed During the Three-Year Period Following the Cessation of Hostilities

If any further support for our construction of the Suspension Act is needed, it is found in the history of wartime suspension of limitations legislation. A review of that history leaves no doubt that Congress intended the World War II legislation to apply to offenses committed after the cessation of hostilities.

During the period of hostilities in World War I there was no law suspending the running of statutes of limitation, and consequently many frauds committed against the Government during that period and during the period following the Armistice were not discovered until the statutory three-year period of limitation had almost or entirely expired. After hostilities were terminated, the Department of Justice undertook to investigate frauds against the Government which had occurred

both during and after the conclusion of hostilities, but it was not until November 17, 1921, more than three years after the Armistice on November 11, 1918, that Congress added a proviso to R.S. 1044, the general three-year limitation statute, extending to six years the period during which "offenses involving the defrauding or attempts to defraud the United States or any agency thereof" might be prosecuted. C. 124, 42 Stat. 220, *infra*, pp. 39-40. Many of these offenses grew out of contractual relations of the Government with persons and corporations engaged in the furnishing of military and naval supplies. This type of transaction required the most minute investigation in order to ascertain the exact facts, and in nearly every case a considerable period of time elapsed before facts could be gathered from the files and other sources sufficient to apprise the Department whether prosecution would be justified.[10] During the House debate, Congressman Graham, the sponsor of the bill (H.R. 8298) to extend the period of limitations from three to six years, said (61 Cong. Rec. 7060):

> Mr. Speaker and gentlemen of the House, shortly after the present Congress was convened I called the attention of the Attorney General to the fact that the statute of limitations was running on almost every kind of crime that had been committed, or that could be charged as having been committed, during

[10] See H. Rep. 365, 67th Cong., 1st sess., of the Committee on the Judiciary accompanying H.R. 8298, which was later enacted as the November 17, 1921, proviso to R.S. 1044.

the war. Section 1044 of the Criminal Code provides a period of limitation of three years on almost all offenses against the Government, such as might have been committed at any time during or since the war. As the war ended on the 11th of November, 1918, it will be seen that a great many of these crimes are already barred by the statute of limitations, the bar having been complete on the 11th of November, 1921, as to all crimes committed during the war period. As to all such crimes, no prosecution can now be had. However, in the period following the war, and in the things that grew out of the war, crimes were committed which are not yet barred, and it has been thought useful, inasmuch as the Attorney General is now investigating many of these matters, that the statute should be so extended that if there has been crime the Department of Justice may prosecute.

The 1921 proviso applied only to frauds committed after the Armistice, because by November 17, 1921, the date of its enactment, the three-year statute had already barred the prosecution of all frauds committed during actual hostilities, which had ended on November 11, 1918. It did, of course, save for prosecution a large number of frauds committed after actual hostilities had ceased and as to which the three-year statute of limitations had not yet run at the time of its passage.[11] The

[11] See, *e. g.*, *Miller* v. *United States*, 24 F. 2d 353 (C. A. 2), certiorari denied, 276 U. S. 638; *Falter* v. *United States*, 23 F. 2d 420 (C. A. 2), certiorari denied, 277 U. S. 590; *Weinhandler*

proviso was eliminated from R. S. 1044 by the Act of December 27, 1927, c. 6, 45 Stat. 51, more than nine years after hostilities in World War I had ended, when the reasons for its existence had ended. See H. Rep. No. 16, 70th Cong., 1st sess.

With the outbreak of hostilities in World War II, legislation similar to the 1921 proviso was considered by the Committees on the Judiciary of both houses of Congress. On May 29, 1941, a bill (H. R. 4916, 77th Cong., 1st sess.) was introduced in the House which provided:

> That in computing for the purpose of any statute of limitations the period within which prosecution must be brought for an offense punishable under the laws of the United States, there shall be excluded any period during which the United States is at war or any period of national emergency (including a limited emergency) proclaimed by the President. * * *

This bill did not pass, but a later bill with a similar purpose (H. R. 6484), which became the 1942 Suspension of Limitations Act, was introduced on June 1, 1942. The later bill provided "that the running of any existing statute of limitations applicable to offenses involving the defrauding or attempts to defraud the United States * * * shall be suspended for the period of the present war

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v. *United States*, 20 F. 2d 359 (C. A. 2), certiorari denied, 275 U. S. 554; *Bailey* v. *United States*, 13 F. 2d 325 (C. A. 9).

and for 6 months thereafter." The Senate substituted for the period of suspension provided by H. R. 6484 a more definite time, *i. e.*, "until June 30, 1945, or until such earlier time as the Congress by concurrent resolution, or the President, may designate," and the bill was enacted into law in that form as the Act of August 21, 1942, *infra*, p. 40. The reports of the Committees of both houses,[12] in commenting on the proposed legislation, used identical language, reading as follows:

> The purpose of the proposed legislation is to suspend any existing statutes of limitations applicable to offenses involving the defrauding or attempts to defraud the United States or any agency thereof, for the period of the present war. Contracting for the United States is done through its various agencies, including the departments and independent establishments and Government-owned and Government controlled corporations, and frauds against all of these agencies are intended to be embraced by the bill.
>
> During the World War many frauds committed against the Government were not discovered until the 3-year statute of limitations had almost expired, and as stated in the committee report hereinafter referred to, many of the alleged offenses were barred from prosecution. * * *

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[12] H. Rep. No. 2051 and S. Rep. No. 1544, 77th Cong., 2d sess.

The Committee Reports cited the history of the 1921 proviso and the committee report precedent thereto (H. Rep. 365, 67th Cong., *supra*), in order to emphasize the need for such legislation in connection with World War II, and then concluded:

> During normal times the present 3-year statute of limitations may afford the Department of Justice sufficient time to investigate, discover, and gather evidence to prosecute frauds against the Government. The United States, however, is engaged in a gigantic war program. Huge sums of money are being expended for materials and equipment in order to carry on the war successfully. Although steps have been taken to prevent and to prosecute frauds against the Government, it is recognized that in the varied dealings opportunities will no doubt be presented for unscrupulous persons to defraud the Government or some agency. These frauds may be difficult to discover as is often true of this type of offense and many of them may not come to light for some time to come. The law-enforcement branch of the Government is also busily engaged in its many duties, including the enforcement of the espionage, sabotage, and other laws.
>
> Your committee is of the opinion that action should be taken at this time to extend the limitations statute *so that frauds may be discovered and punished even after the termination of the present conflict*, and to insure that the limitations statute will not operate, under stress of the present-day events, for the pro-

tection of those who would defraud or attempt to defraud the United States. [Italics supplied.]

Since both Committee Reports state that this legislation was intended to extend the period of limitations so that "frauds may be discovered and punished even after the termination of the present conflict," Congress must have contemplated that even this legislation, passed in the early months of World War II, would be operative in the post-hostilities period. Also indicative of this intent is the fact that the framers of the 1942 Act made specific reference to the 1921 proviso and its history in recommending comparable legislation. Since the 1921 proviso enlarged the period of limitations only as to frauds committed after the termination of hostilities in World War I, it is only reasonable to conclude that Congress contemplated that the present statute would encompass, in addition to the period of actual hostilities, a period of time after the termination of hostilities during which such frauds undoubtedly would be committed against the Government as had been the case after World War I.

We have already discussed (*supra*, pp. 13-19) the significance of the amendments of the 1942 Suspension Act in the Contract Settlement and Surplus Property Acts of 1944, both of which were enacted to facilitate reconversion to a peace time economy after the cessation of the fighting in

World War II. We will only add here that the committee reports accompanying the bill (S. 1718) which became the Contract Settlement Act indicate the importance of the legislation in protecting and promoting the demobilization and reconversion process.[13] In addition, it was pointed out during the House debate on the bill that it was not until April 30, 1921, nearly two and one-half years after the Armistice ending hostilities in World War I, that practically all war-contract claims had been settled (90 Cong. Rec. 2866).

It is thus clear that Congress intended the Suspension Act, as amended in the Surplus Property Act, to function as the 1921 proviso had functioned, and that it would apply to offenses committed during the three-year period following the close of World War II hostilities, as the 1921 proviso had after the Armistice in World War I.

The same purpose is evident from the further amendment of the Suspension Act in the Surplus Property Act of 1944. That Act is entitled, "An Act to aid the reconversion from a war to a peace economy through the distribution of Government surplus property and to establish a Surplus Property Board to effectuate the same, and for other purposes." Patently, the amendment extending the Suspension Act to offenses "committed in connection with the care and handling and disposal of property under the Surplus Property Act of 1944"

[13] See H. Rep. 1590, p. 18, and S. Rep. 836, p. 1, fn. 1, 78th Cong., 2d sess.

related in the main to a period when surplus property would be distributed, i.e., after the cessation of hostilities. Thus, for the second time Congress amended the Suspension Act to make it apply to offenses which, by their very nature, would for the most part be committed during the period following the end of hostilities.[14] In its report accompanying the bill (S. 2063) which became the Surplus Property Act, the Senate Committee on Military Affairs said (S. Rep. 1057, 78th Cong., 2d Sess., p. 14):

> As was provided in the Contract Settlement Act of 1944, the statute of limitations with respect to offense against the laws of the United States arising in connection with activities under this act was suspended until 3 years after termination of hostilities in the present war. This provision has been necessitated by the magnitude of the operations involved under this act, and the intensive preoccupation of both participants and witnesses with the war effort. It is clear that the bulk of the offenses cognizable under this statute will not be apprehended or investigated until the end of the war and will then require considerable time before they advance to the stage of litigation.[15]

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[14] Section 38 (58 Stat. 765, 784) of the Surplus Property Act provided that "Unless extended by law, this Act shall expire at the end of three years following the date of the cessation of hostilities in the present war."

[15] See also the remarks of Congressman Sabath, who was in charge of the House Resolution designed to bring the Surplus Property bill to the floor of the House for consideration. In

It cannot be doubted that when the Contract Settlement Act and the Surplus Property Act were passed in 1944, Congress had the reconversion period in mind, and that it was acting with knowledge, gleaned from the experiences of World War I, that the period following the close of hostilities is rife with opportunities for the unscrupulous to defraud the Government. It is logical and proper, therefore, to conclude that Congress, in 1944, was endeavoring to afford the Government a measure of protection in connection with World War II equal to, if not greater than, that which had been provided for the period following the close of hostilities in World War I. In the circumstances, it is beyond reasonable controversy that Congress intended the Suspension Act, as amended in the two 1944 acts, to apply to offenses committed during the three-year period following the cessation of hostilities in World War II.

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pointing out to the House the importance of the Surplus Property bill, Mr. Sabath said (90 Cong. Rec. 6952):

"Mr. Speaker, I recollect regretfully the mishandling of our surplus property after the last war, both here and abroad, when some irresponsible gentlemen having authority to dispose of the surpluses played into the hands of their own former employers, which brought about prosecutions in 1921 and 1922 of some but not all of them. This situation I hope will not happen again because, as one who insisted on the prosecution of the guilty manipulators after the first war, I pledge myself to do likewise if I should obtain any information as to any malfeasance or unfair dealings on the part of those who will be entrusted with the disposition of these billions of Government surplus property."

CONCLUSION

It is respectfully submitted, therefore, that the orders of the District Courts dismissing the indictments should be reversed.

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NOVEMBER 1951.

APPENDIX

1. Section 29 of the Criminal Code, 35 Stat. 1094 (18 U.S.C. (1946 ed.) 73; now 18 U.S.C. 495):

> Whoever shall falsely make, alter, forge, or counterfeit, or cause or procure to be falsely made, altered, forged, or counterfeited, or willingly aid or assist in the false making, altering, forging, or counterfeiting, any deed, power of attorney, order, certificate, receipt, contract, or other writing, for the purpose of obtaining or receiving, or of enabling any other person, either directly or indirectly, to obtain or receive, from the United States, or any of their officers or agents, any sum of money; or whoever shall utter or publish as true, or cause to be uttered or published as true, any such false, forged, altered, or counterfeited deed, power of attorney, order, certificate, receipt, contract, or other writing, with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited, or whoever shall transmit to, or present at, or cause or procure to be transmitted to, or presented at, any office or officer of the Government of the United States, any deed, power of attorney, order, certificate, receipt, contract, or other writing, in support of, or in relation to, any account or claim, with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited, shall be fined not more than one thousand dollars and imprisoned not more than ten years.

2. Section 35(A) of the Criminal Code, 35 Stat. 1095, as amended (18 U.S.C. (1946 ed.) 80; now 18 U.S.C. 1001):

> Whoever shall * * * make or cause to be made any false or fraudulent statements or representations, * * * knowing the same to contain any fraudulent or fictitious statement or entry in any matter within the jurisdiction of any department or agency of the United States or of any corporation in which the United States of America is a stockholder, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

3. Section 1044, Revised Statutes, as amended (18 U.S.C. (1946 ed.) 582; now 18 U.S. 3282):

> No person shall be prosecuted, tried, or punished for any offense, not capital, except as provided in section 1046 [crimes under revenue laws or slave trade laws], unless the indictment is found, or the information is instituted, within three years next after such offense shall have been committed: *Provided however, that in offenses involving the defrauding or attempts to defraud the United States or any agency thereof, whether by conspiracy or not, and in any manner, and now indictable under any existing statutes, the period of limitation shall be six years. This Act shall apply to acts, offenses, or transactions, where the existing statute of limitations has not yet fully run, but this proviso shall not apply to acts, offenses, or transactions*

which are already barred by the provisions of existing laws. [Italics supplied.][16]

4. Section 1 of the Wartime Suspension of Limitations Act of August 24, 1942, c. 555, 56 Stat. 747:

> the running of any existing statute of limitations applicable to offenses involving the defrauding or attempts to defraud the United States or any agency thereof, whether by conspiracy or not, and in any manner, and now indictable under any existing statutes, shall be suspended until June 30, 1945, or until such earlier time as the Congress by concurrent resolution, or the President, may designate. This Act shall apply to acts, offenses, or transactions where the existing statute of limitations has not yet fully run, but it shall not apply to acts, offenses, or transactions which are already barred by the provisions of existing laws.

5. Section 1 of the Suspension Act of August 24, 1942, as amended by Section 19(b) of the Contract Settlement Act of July 1, 1944 (c. 358, 58 Stat. 649, 667):

> Sec. 19(b). The first section of the Act of August 24, 1942 * * * is amended to read as follows:
>
> The running of any existing statute of limitations applicable to any offense against the

[16] The italicized language was placed in this section by the Act of November 17, 1921, c. 124, 42 Stat. 220. It was eliminated from the section by the Act of December 27, 1927, c. 6, 45 Stat. 51. The section without the italicized language now appears, with slight changes in phraseology, as 18 U. S. C. 3282.

laws of the United States (1) involving defrauding or attempts to defraud the United States or any agency thereof whether by conspiracy or not, and in any manner, or (2) committed in connection with the negotiation, procurement, award, performance, payment for, interim financing, cancelation or other termination or settlement, of any contract, subcontract, or purchase order which is connected with or related to the prosecution of the present war, or with any disposition of termination inventory by any war contractor or Government agency, shall be suspended until three years after the termination of hostilities in the present war as proclaimed by the President or by a concurrent resolution of the two Houses of Congress. This section shall apply to acts, offenses, or transactions where the existing statute of limitations has not yet fully run, but it shall not apply to acts, offenses, or transactions which are already barred by provisions of existing law.

6. Section 1 of the Suspension Act of August 24, 1942, as further amended by Section 28 of the Surplus Property Act of October 3, 1944 (c. 479, 58 Stat. 765, 781; 18 U.S.C. (1946 ed.) 590a):

Sec. 28. The first section of the Act of August 24, 1942 * * * as amended, is amended to read as follows:

The running of any existing statute of limitations applicable to any offense against the laws of the United States (1) involving de-

frauding or attempts to defraud the United States or any agency thereof whether by conspiracy or not, and in any manner, or (2) committed in connection with the negotiation, procurement, award, performance, payment for, interim financing, cancelation or other termination or settlement, of any contract, subcontract, or purchase order which is connected with or related to the prosecution of the present war, or with any disposition of termination inventory by any war contractor or Government agency, or (3) committed in connection with the care and handling and disposal of property under the Surplus Property Act of 1944, shall be suspended until three years after the termination of hostilities in the present war as proclaimed by the President or by a concurrent resolution of the two Houses of Congress. This section shall not apply to acts, offenses, or transactions where the existing statute of limitations has not yet fully run, but it shall not apply to acts, offenses, or transactions which are already barred by provisions of existing law.

7. 18 U. S. C. (1948 rev.) 3287:

Wartime suspension of limitations. When the United States is at war the running of any statute of limitations applicable to any offense (1) involving fraud or attempted fraud against the United States or any agency thereof in any manner, whether by conspiracy or not, or (2) committed in connection with the acquisition, care, handling, custody, control or disposition of any real or personal property of the United States, or (3) com-

mitted in connection with the negotiation, procurement, award, performance, payment for, interim financing, cancelation, or other termination or settlement, of any contract, subcontract, or purchase order which is connected with or related to the prosecution of the war, or with any disposition of termination inventory by any war contractor or Government agency, shall be suspended until three years after the termination of hostilities as proclaimed by the President or by a concurrent resolution of Congress.

Definitions of terms in section 103 of title 41 shall apply to similar terms used in this section.

8. Section 21 of the Act of June 25, 1948, revising the Criminal Code (c. 645, 62 Stat. 683, 862):

The sections or parts thereof of the Revised Statutes or Statutes at Large enumerated in the following schedule are hereby repealed. Any rights or liabilities now existing under such sections or parts thereof shall not be affected by this repeal.

[Among the enumerated sections is the Wartime Suspension of Limitations Act of August 24, 1942, as amended, *supra*.]

9. Presidential Proclamation 2714 of December 31, 1946 (61 Stat. (Pt. 2) 1048-1049; 12 F. R. 1):

A PROCLAMATION

With God's help this nation and our allies, through sacrifice and devotion, courage and perseverance, wrung final and unconditional surrender from our enemies. Thereafter, we, together with the other United Nations, set

about building a world in which justice shall replace force. With spirit, through faith, with a determination that there shall be no more wars of aggression calculated to enslave the peoples of the world and destroy their civilization, and with the guidance of Almighty Providence great gains have been made in translating military victory into permanent peace. Although a state of war still exists, it is at this time possible to declare, and I find it to be in the public interest to declare, that hostilities have terminated.

NOW, THEREFOR, I, HARRY S. TRUMAN, President of the United States of America, do hereby proclaim the cessation of hostilities of World War II, effective twelve o'clock noon, December 31, 1946.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the City of Washington this 31st day of December in the year of our Lord nineteen hundred and forty-six, and of the Independence of the United States of America the one hundred and seventy-first.

[SEAL.] HARRY S TRUMAN.

By the President:

JAMES F. BYRNES,
The Secretary of State.

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